

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DEVIN WARREN SIZEMORE,

Defendant.

Case No. 6:21-cr-00138-RAW

**Trial Brief**

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COMES NOW the Defendant Devin Sizemore, by and through his assigned counsel, and hereby submits this trial brief.

**Background**

This case arises out of Mr. Sizemore's alleged involvement in the tragic death of his young daughter on July 15, 2016. A federal grand jury returned a six-count indictment on May 12, 2021.<sup>1</sup> Count One alleges Mr. Sizemore committed first-degree murder of his daughter, in violation of 18 U.S.C. §§ 1111(a), 1151, 1153. Count Two alleges second-degree murder of his daughter, in violation of the same provisions of Title 18.

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<sup>1</sup> Mr. Sizemore was originally tried and convicted in state court on charges arising from the same alleged conduct. In light of the Supreme Court's decision in *McGirt v. Oklahoma*, 591 U.S. \_\_\_, 140 S.Ct. 2452 (2020), that conviction was vacated and the charges dismissed by the Oklahoma Court of Criminal Appeals. *Sizemore v. State*, 485 P.3d 867, 868, *cert. denied*, 211 L. Ed. 2d 618, 142 S.Ct. 935 (2022).

Count three alleges voluntary manslaughter in violation of 18 U.S.C. §§ 1112(a), 1151, 1153. Count Four charges child abuse of his daughter, in violation of 18 U.S.C. §§ 1151, 1153, and 21 Oklahoma Statutes § 843.5(a). Count Five alleges assault resulting in serious bodily injury, in violation of 18 U.S.C. §§ 1113(a)(6), 1151, 1153. Count Six charges assault and battery on a police officer, in violation of 18 U.S.C. §§ 13, 1151, 1152, and 21 Oklahoma Statutes § 649. Pursuant to the government's unopposed motion, this Court dismissed Count Six on April 28, 2022.

Mr. Sizemore filed a motion to suppress any and all statements attributed to him during his arrest and interrogation on July 15, 2016. Dkt. No. 46. That motion was based on two independent grounds: (1) the statement was unconstitutionally elicited after Mr. Sizemore invoked his *Miranda* rights; and (2) Mr. Sizemore did not voluntarily, knowingly, and intelligently waive his *Miranda* rights, and, even if he did, his subsequent statement was not voluntary.

Mr. Sizemore's suppression motion was referred to Magistrate Judge Jason A. Robertson for entry of findings and a recommendation. The Magistrate Court held an evidentiary hearing on September 22,

2022. The Magistrate Court issued the Report on October 14, 2022, recommending that this Court deny Mr. Sizemore's suppression motion. Mr. Sizemore filed timely objections to the Report on October 28, 2022.

A pretrial conference is scheduled for March 16, 2023, at 9:00 a.m.

On March 1, 2023, this Court granted in part, denied in part, and found as moot in part Mr. Sizemore's motions *in limine*. See Dkt. No. 150.

A jury trial is currently set for April 4, 2023, at 9:00 a.m. before the Honorable Ronald A. White. Mr. Sizemore remains in custody.

### **Proposed Witnesses**

The defense expects to call the following witnesses in its case-in-chief, presented in no particular order. The anticipated time for the direct examination is provided for each witness. Please note, however, this is not an exhaustive list. The defense reserves the right to call additional witnesses.

1. Brianna Higgs  
30 Minutes
2. Tina Lanham  
30 Minutes
3. Gaila Bass  
30 Minutes

4. Christina Sam  
30 Minutes
5. Mark Sam  
30 Minutes
6. Sharon Wood  
30 Minutes
7. Matthew Clem, Ph.D  
120 Minutes
8. Dr. Scott LaPoint  
60 Minutes
9. Richard Leo, Ph.D.  
90 Minutes
10. Dr. Kelly Andrzejczyk-Beatty  
90 Minutes

### **Notice of Expert Witnesses**

Mr. Sizemore filed a notice of expert testimony on October 11, 2022 and an amended notice on March 6, 2023. *See* Dkt. Nos. 114 & 162.

### **Jury Instructions**

Mr. Sizemore filed proposed jury instructions and verdict sheet on October 11, 2023. *See* Dkt. Nos. 111 & 113. He hereby renews those proposed jury instructions and verdict sheet.

### **Jury Questionnaire**

Mr. Sizemore filed a proposed jury questionnaire on October 11, 2022. *See* Dkt. No. 112. He hereby renews the proposed jury questionnaire.

### **Defenses**

Mr. Sizemore entered a not guilty plea on May 18, 2021. *See* Dkt. No. 27. He continues to maintain his innocence and denies all charges. In the event the government produces sufficient evidence at trial, Mr. Sizemore has given notice of insanity defense. Dkt. No. 49.

### **Electronic Media**

Mr. Sizemore gave notice of submission of electronic media exhibits on October 11, 2022. Dkt. No. 166. He hereby renews that notice.

Respectfully submitted,

/s/

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### **Certificate of Service**

I, hereby certify that on March 6, 2022, I electronically transmitted the attached documents to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

Lisa Man, Assistant United States Attorney  
Gerald A. Collins, Assistant United States Attorney

/s/

Lisa A. Peebles  
Federal Public Defender – NDNY